Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-1943

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Plaintiffs-Appellants,

vs.

RAYBESTOS-MANHATTAN, INC., and RAYBESTOS-MANHATTAN INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Defendants-Appellees.

On Appeal from the Final Order of the United States Court of Appeals for the Third Circuit

JURISDICTIONAL STATEMENT

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In The

Supreme Court of the United States

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No.

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Plaintiffs-Appellants,

vs.

RAYBESTOS-MANHATTAN, INC., and RAYBESTOS-MANHATTAN INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Defendants-Appellees.

On Appeal from the Final Order of the United States Court of Appeals for the Third Circuit

JURISDICTIONAL STATEMENT

STATEMENT AS TO JURISDICTION

The appellants, pursuant to the United States Supreme Court Rules 13(2) and 15, file this statement of the basis upon which they have contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment in question and should exercise such jurisdiction in this case.

OPINION BELOW

The United States Court of Appeals for the Third Circuit on February 15, 1980, decided and filed its written opinion, which is not yet reported. A copy of the opinion is attached to this jurisdictional statement as Appendix B. A petition for rehearing in banc was denied by the court on March 19, 1980.

JURISDICTION

The appeal herein is from a final judgment decided and filed by the United States Court of Appeals for the Third Circuit on February 15, 1980, which held that ". . . the provision of the pension plan(s) of defendant(s) . . . Raybestos Manhattan authorizing reduction, or offset, of pension benefits by amounts received by the pensioner under a Workmen's Compensation statute . . . are not unlawful under ERISA and that the New Jersey statute prohibiting them is pre-empted by ERISA."

Plaintiffs' petition for rehearing in banc was denied on March 19, 1980 and notice of appeal was filed on April 25, 1980 with the Clerk of the United States Court of Appeals for the Third Circuit.

The Supreme Court of the United States has jurisdiction to review, by direct appeal, the opinion complained of by the provisions of 28 U.S.C. §1254(2).

The following decision sustained the jurisdiction of the Supreme Court to review the opinion on direct appeal in this case: *The United States Gas Pipeline Company v. Ideal Cement Company,* 369 U.S. 134 (1961); *Watson v. Employers Liability Assurance Corp.,* 348 U.S. 66 (1954), *rehearing denied,* 348 U.S. 921 (1954).

The statute of the State of New Jersey declared preempted by ERISA, by the Circuit Court of Appeals, is

"34:15-29. Compensation preferential lien; claim not assignable; *setoffs*

The right of compensation granted by this chapter shall have the same preference against the assets of the employer as is now or may hereafter may be allowed by law for a claim for unpaid wages for labor. Claims are payments due under this chapter shall not be assignable and shall be exempt from all claims of creditors and from levy, execution or attachment. The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees retirement pension benefits or payments. Amended by L. 1977, c. 156 Section 1, effective July 14, 1977."

The United States Court of Appeals for the Third Circuit held that the statutory scheme presented by this statute for the preservation of benefits to those injured in industrial accidents is unconstitutional because it is preempted by ERISA, 29 U.S.C. §1144(a). The court further declared that the subject offsets were not impermissible forfeitures under ERISA itself, 29 U.S.C. §1053(a). The decision effects an invasion into the established police power possessed by a state to protect workers within the state and misapprehends the true character of workers' compensation benefits.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes involved are: New Jersey Statutes Annotated, 34:15-29 (Supp. 1979) and the Employees Retirement Income Security Act of 1974, 29 U.S.C. §§1001, *et seq.;* 1053(a); 1144; 1002(19); 1021(e). The constitutional provision involved is the United States Constitution, Article VI, Section 2.

QUESTIONS PRESENTED

The Court of Appeals for the Third Circuit erred:

I. In holding and concluding that N.J.S.A. 34:15-29 is unconstitutional because it is preempted by ERISA, 29 U.S.C. §1144(a) and therefore violative of the Supremacy Clause of the United States Constitution, Article VI, Section 2.

II. In holding and concluding that the offset provision in question is not unlawful under ERISA, 29 U.S. §1053(a).

STATEMENT OF THE CASE

On February 1, 1978, plaintiffs filed a class action complaint in the Superior Court of New Jersey, Chancery Division. The gravamen of the complaint was that the defendants, in offsetting plaintiffs' retirement pension benefits by like amounts due to plaintiffs by a virtue of New Jersey Workers' Compensation judgments violated N.J.S.A. 34:15-29 (Supp. 1979). The case was removed to the United States District Court for the District of New Jersey on March 3, 1978. Subsequently, class certification was abandoned.

The following statement of stipulated facts was filed with the court on December 28, 1978:

> "The parties to the above captioned-matter hereby agree to stipulate to the following facts for the purposes of this litigation only:
>
> (1) The plaintiffs in this action are all former employees of defendant, Raybestos-Manhattan, Inc. (Raybestos).
>
> (2) The plaintiffs' dates of service are: (a) Joseph Alessi, September 14, 1939 to March 1, 1972; (b) Raymond Buisson, November 10, 1941

to January 1, 1973; (c) Stephen Michalski, June 30, 1942 to February 28, 1973; (d) Charles Repka, June 22, 1934 to June 13, 1973; (e) Helen Vogt, August 17, 1944 to September 28, 1973; (f) T. Edward White, July 8, 1941 to June 8, 1973.

(3) With the exception of Helen Vogt, the plaintiffs are all entitled to retirement income payments from Raybestos under the terms of the Raybestos-Manhattan Inc. Employee Retirement Plan (Pension Plan).

(4) Although Helen Vogt did not qualify for retirement under the terms of the Pension Plan, she is eligible to receive Deferred Termination Benefits commencing February 1, 1979.

(5) Many more former employees of Raybestos are receiving or are entitled to receive pension or deferred compensation benefits.

(6) Article VI, Section (4)(b) of the Pension Plan and the Deferred Termination Benefits agreement provide in relevant part that workmen's compensation benefits are deductible from pension benefits.

(7) Under the terms of the Pension Plans a person is paid a lump sum amount at the time the workmen's compensation judgment is awarded. Thereafter, when he commences receiving pension or deferred compensation payments, a certain amount is deducted each month from these payments until the amount paid in workmen's compensation judgment is fully offset.

(8) The offset provision provides:

> All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

(9) Effective July 14, 1977, N.J.S.A. 34:15-29 was amended by Chapter 156 of the Laws of 1977 to include a provision that:

> The right of compensation granted by this Chapter may not be set off against employee's retirement pension benefits or payments.

(10) Each of the plaintiffs secured a Judgment against the respondent pursuant to the New Jersey Worker's Compensation Act (N.J.S.A. 34:15-1 *et seq.*).

(11) The date and amount of the award for each respective plaintiff are: (a) Joseph Alessi, November 30, 1977, $6,470.00; (b) Raymond Buisson, October 20, 1977, $6,760.00; (c) Stephen Michalski, November 9, 1977, $4,380.00; (d) Charles Repka, August 8, 1977 $6,200.00; (e) Helen Vogt, November 21, 1977, $880.00; (f) T. Edward White, November 21, 1977, $6,170.00.

(12) Since the date of the respective worker's compensation awards, the following offsets have

been made monthly by defendant: (a) Joseph Alessi ($173); (b) Raymond Buisson ($154); (c) Stephen Michalski ($170); (d) Charles Repka ($173); (e) Helen Vogt (none); (f) T. Edward White ($158).

(13) Plaintiffs made a demand upon defendant after Chapter 156 was enacted to cease offsetting workmen's compensation judgment payments from retirement income payments.

(14) Defendant has refused to comply with the demand for the legal reasons stated in its brief.

(15) The question presented in this case is whether the deductions made subsequent to the date Chapter 156 was amended are lawful."

The court, in an opinion dated February 15, 1979, found for plaintiffs, granting relief in the form of damages and an injunction barring further offsets. In so doing, the court held that N.J.S.A. 34:15-29 was not preempted by ERISA, 29 U.S.C. §1144(a) and that ERISA itself made such offsets impermissible forfeitures, 29 U.S.C. §1053(a). An order in conformity with the court's opinion was entered on March 7, 1979. *See* Appendix A.

Defendants filed a notice of appeal on March 19, 1979. The appeal was docketed in the United States Court of Appeals for the Third Circuit on April 30, 1979. Orders granting stay of payment of damages and approving supersedeas bond and granting stay of injunctive relief pending appeal were entered on March 21, 1979 and May 3, 1979 respectively.

Briefs were submitted to the court by both parties and the Attorney General of the State of New Jersey, who sought and was granted permission to intervene. The case was called for oral argument on January 8, 1980. At the time of the argument, the

case was consolidated with *Buczynski v. General Motors Corp.*, 456 F. Supp. 867 (1978) (notice of appeal filed March 12, 1979, docket no. 79-1668) which involved substantially the same issues.

On February 15, 1980, the court of appeals rendered its opinion, reversing the decision of the United States District Court in its entirety in this case as well as *Buczynski.* The court held that:

> ". . . the provision of the pension plans of defendants General Motors and Raybestos-Manhattan authorizing reduction, or offset, of pension benefits by amounts received by the pensioner under a Workmen's Compensation statute . . . are not unlawful under ERISA, and that the New Jersey statute prohibiting them is pre-empted by ERISA."

On or about February 27, 1980, plaintiffs filed a petition for rehearing in banc with the clerk of the court of appeals. On March 19, 1980, said petition was denied.

An order in conformity with the opinion of the court of appeals was entered in the United States District Court.

Notice of appeal to the Supreme Court of the United States was filed with the Clerk of the United States Court of Appeals for the Third Circuit on April 25, 1980 along with a request to certify and transmit the entire record to the Supreme Court.

THE FEDERAL QUESTIONS SUBMITTED ARE SUBSTANTIAL

The Third Circuit Court of Appeals has held that the New Jersey statute protecting an injured worker's right to compensatory benefits from invasion by a plan designed to deliver vested retirement income, the nature and extent of which

is based upon employment tenure alone, is preempted by ERISA. In doing so, the court eroded the state's police power in an area which has historically been safeguarded. *DeCanas v. Bica,* 424 U.S. 351 (1976). Moreover, the court failed to apply the tests for preemption which were set forth by the Supreme Court in *Florida Lime and Avocado Growers v. Paul,* 373 U.S. 132 (1963) and by the Third Circuit itself in *Rogers v. Larson,* 563 F.2d 617 (3rd Cir. 1977), *cert. denied,* ____ U.S. ____, 58 L. Ed. 2d 95 (1978). There exists a wide divergence of opinion in the federal judiciary concerning whether or not state statutes such as presented here are, in fact, preempted by ERISA. This is evidenced by conflicting decisions within the District of New Jersey itself. *Compare Carpenter Technology Corp. v. Boyton,* Civil No. 78-1415, Filed December 12, 1979 (supplemental opinion filed March 7, 1980). *See* Appendix G.

Notwithstanding the validity of the New Jersey statute, the court of appeals held that the offsets in question did not violate the anti-forfeiture provisions of ERISA. The court founded its reasoning in this regard upon an implicit approval, by Congress, of a scheme of integration of social security and retirement pension benefits. The court equates workers' compensation with social security benefits and concludes that it is implicit also that the former may be integrated. The court's conclusion misapprehends the true character of workers' compensation benefits.

Again, it is readily apparent that judicial opinion is divided concerning the propriety of the offset provision in question. In its own opinion, the court of appeals, in footnote 10, cites six cases where the federal courts have been equally divided as to the solution to the same issue. The Sixth Circuit Court of Appeals has not yet proffered its opinion in *Utility Workers Union v. Consumers Power Co.,* 453 F. Supp. 447 (Eastern Dist. Mich. 1978), *appeal* docketed no. 78-1402 (6th Cir., August 2, 1978).

CONCLUSION

It is submitted that the decision of the Third Circuit holding N.J.S.A. 34:15-29 preempted by ERISA failed to give due regard to Supreme Court doctrines in *Florida Lime and Avocado Growers, supra,* and *DeCanas, supra,* and infringes upon the state's historic police powers. Moreover, the decision results in an integration of benefits scheme which is contrary to the overall intention of Congress in formulating ERISA. The inconsistent decisions of the federal courts among the states bespeaks the national importance of the issues and the need for uniformity. Accordingly, the federal questions presented require the plenary consideration of the United States Supreme Court for resolution.

Respectfully submitted,

s/ Michael S. Scarola
GELMAN & GELMAN
Attorneys for Plaintiffs-Appellants

APPENDIX A — OPINION OF THE HONORABLE LAWRENCE A. WHIPPLE DATED FEBRUARY 15, 1979

UNITED STATES DISTRICT COURT

District of New Jersey
Newark, N.J. 07101

FILED FEB. 15, 1979

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Re: Joseph Alessi et al. v. Raybestos-Manhattan, Inc., et al.
Civil No. 78-0434

Gentlemen:

Counsel in this matter have submitted a comprehensive stipulation of facts and trial briefs and have consented to my deciding the matter on the basis of those submissions. Accordingly, I find for the plaintiffs for the reasons set out herein.

I. Procedural Posture

This action was originally filed in the Chancery Division of the Superior Court of New Jersey on February 1, 1978. Soon thereafter defendants removed the action to this Court pursuant to 28 U.S.C. §1441. Jurisdiction in this Court is based on 28 U.S.C. §1337 and 29 U.S.C. §§1001 et seq., 1132.

II. Facts

The submitted facts as stipulated to by counsel covers all the pertinent data in a manageable format.

Appendix A

(1) The plaintiffs in this action are all former employees of defendant, Raybestos-Manhattan, Inc. (Raybestos).

(2) The plaintiffs' dates of service are: (a) Joseph Alessi, September 14, 1939 to March 1, 1972; (b) Raymond Buisson, November 10, 1941 to January 1, 1973; (c) Stephen Michalski, June 30, 1942 to February 28, 1973; (d) Charles Repka, June 22, 1934 to June 13, 1973; (e) Helen Vogt, August 17, 1944 to September 28, 1973; (f) T. Edward White, July 8, 1941 to June 8, 1973.

(3) With the exception of Helen Vogt, the plaintiffs are all entitled to retirement income payments from Raybestos under the terms of the Raybestos-Manhattan Inc. Employee Retirement Plan (Pension Plan).

(4) Although Helen Vogt did not qualify for retirement under the terms of the Pension Plan, she is eligible to receive Deferred Termination Benefits commencing February 1, 1979.

(5) Many more former employees of Raybestos are receiving or are entitled to receive pension or deferred compensation benefits.

(6) Article VI, Section (4)(b) of the Pension Plan and the Deferred Termination Benefits agreement provide in relevant part that workmen's compensation benefits are deductible from pension benefits.

(7) Under the terms of the Pension Plan a person is paid a lump sum amount at the time the workmen's compensation judgment is awarded. Thereafter, when he commences receiving pension or deferred compensation payments, a certain amount is deducted each month from these payments until the amount paid in workmen's compensation judgment is fully offset.

Appendix A

(8) The offset provision provides:

> All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

(9) Effective July 14, 1977, N.J.S.A. 34:15-29 was amended by Chapter 156 of the Laws of 1977 to include a provision that:

> The right of compensation granted by this Chapter may not be set off against employee's retirement pension benefits or payments.

(10) Each of the plaintiffs secured a Judgment against the respondent pursuant to the New Jersey Worker's Compensation Act (N.J.S.A. 34:15-1 et seq.).

(11) The date and amount of the award for each respective plaintiff are: (a) Joseph Alessi, November 30, 1977, $6,470.00; (b) Raymond Buisson, October 20, 1977, $6,760.00; (c) Stephen Michaleski, November 9, 1977, $4,380.00; (d) Charles Repka, August 8, 1977, $6,200.00; (e) Helen Vogt, November 21, 1977, $880.00; (f) T. Edward White, November 21, 1977, $6,170.00.

(12) Since the date of the respective worker's compensation awards, the following offsets have been made monthly by defendant: (a) Joseph Alessi ($173); (b) Raymond Buisson ($154); (c) Stephen Michalski ($170); (d) Charles Repka ($173); (e) Helen Vogt (none); (f) T. Edward White ($158).

(13) Plaintiffs' made a demand upon defendant after Chapter 156 was enacted to cease offsetting workmen's compensation judgment payments from retirement income payments.

(14) Defendant has refused to comply with the demand for the legal reasons stated in its brief.

(15) The question presented in this case is whether the deductions made subsequent to the date Chapter 156 was amended are lawful.

III. Discussion

A. Preemption.

Defendant contends that the amended N.J.S.A. §4:15-29 is unconstitutional under the Supremacy Clause of the United States Constitution, in that it is preempted by ERISA, 29 U.S.C. 1001 et seq.

When the laws of a state are challenged as void under the Supremacy Clause no simple formula can capture the complexities of such a determination. *Goldstein v. California,* 412 U.S. 546 (1973); *Rogers v. Larson,* 563 F.2d 617 (3d Cir. 1977), *cert. denied sub nom. Larsen v. Lockhart,* ____ U.S. ____, (October 2, 1978). Despite the problems inherent in determination of conflicts between state and federal laws, the *Rogers* court points out that the Supreme Court has developed three grounds under which a local statute may be deemed preempted by federal law:

> (1) Congress has unmistakenly so ordained; or
> (2) If the nature of the regulated subject matter permits no other conclusion but preemption; or
> (3) If it violates the Supremacy Clause by

> standing as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

See, Rogers v. Larson, supra, 563 F.2d at 620-621.[1]

It is clear that ERISA governs the establishment, operation and administration of virtually all private pension plans in the United States, *Malone v. White Motor Corp.*, 435 U.S. 497, 499 n.1 (1978). Defendant argues that by virtue of 29 U.S.C. §1144(a):

> (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supercede any and all State Laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

The state statute in question is preempted under the first preemption test, in that Congress unmistakenly intended to preempt the state law.

The defendant cites numerous cases where state laws governing pension plans have been preempted by ERISA. Congress certainly intended to occupy the entire field of pension plan law to the exclusion of all state pension plan regulation. 29 U.S.C. §1144(a). N.J.S.A. 34:15-29 however is concerned with workmen's compensation and only has a collateral effect on pension plans. The state statute provides for workmen's

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1. The test itself is culled from: Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 141, 142 (1963); DeCanas v. Bica, 424 U.S. 351, 356, 363 (1976); Hines v. Davidowitz, 312 U.S. 52, 67 (1941); Goldstein v. California, *supra,* 412 U.S. at 561.

compensation setoffs as against disability pension benefits (e.g., 29 U.S.C. §1002(1)) but not against retirement pension benefits (29 U.S.C. §1002(2)).

I believe it is unnecessary to outline the historical basis of workmen's compensation or the obviously strong local interest New Jersey has in protecting and compensating its residents. I will note, however, that ERISA itself allows for a certain autonomy in respect to state workmen's compensation. 29 U.S.C. §1003(b)(3). Although other courts might rule differently,[2] I feel that the New Jersey statute, N.J.S.A. 34:15-29, barring workmen's compensation setoffs against employee retirement pension benefits is not preempted or superceded by ERISA, 29 U.S.C. §1144(a).

B. The Offset Provision and 29 U.S.C. §1053.

In a similar fact situation Judge Lacey recently held that a workmen's compensation offset is void as a forfeiture[3] in contravention of 29 U.S.C. §1053(a). *Buczynski v. General Motors Corp.*, 456 F. Supp. 867, 870-871 (D.N.J. 1978). I concur with his well-reasoned opinion.

Furthermore in a motion for reconsideration[4] in the *Buczynski* case Judge Lacey was faced with the exact point the defendant in this action raises. Namely, how treasury regulation §1.411(a)-4(a) defining nonforfeitability effects 29 U.S.C. §1053. The opinion includes this simple analysis of the problem:

---

2. *See*, e.g., Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977).

3. *See also*, Utility Workers Union v. Consumers Power Co., 453 F. Supp. 447 (E.D. Mich. 1978); Riley v. MEBA Pension, 570 F.2d 406 (2d Cir. 1977); *but see*, Bordine v. Evans Products Co., 453 F. Supp. 19 (E.D. Mich. 1978).

4. Opinion filed December 20, 1978.

> . . . 29 U.S.C. §1002(19) provides the definition. Under this section, only the exceptions specifically included in §1053 are consistent with nonforfeitability. Worker's compensation does not appear. Only deductions included in §1053(a)(3) are exceptions to §1002's definition of nonforfeitability. *See, Riley v. MEBA Pension Trust, supra,* 570 F.2d at 409; *Utility Workers Union v. Consumer Powers Co., supra,* 453 F. Supp. at 456; *Keller v. Graphic Systems of Akron, Inc.,* 422 F. Supp. 1005, 1008 (N.D. Ohio 1976). (footnote omitted)

Thus the offset provision is void as a forfeiture and must be removed from the pension plan.

C. National Labor Relations Act.

Defendant asserts that N.J.S.A. 34:15-29 is unconstitutional in that it intrudes upon and conflicts with the National Labor Relations Act (hereinafter NLRA), 29 U.S.C. §141 et seq., which provides for the unfettered right of an employer and union to bargain collectively as to the terms and conditions of employment.

This is actually another preemption argument. Suffice it to say that New Jersey has a strong local interest in maintaining a competent workmen's compensation program. As the Supreme Court noted in *Lodge 76, Machinists v. Employment Relations Committee,* 427 U.S. 132 (1976):

> . . . Federal labor policy as reflected in the National Labor Relations Act, as amended, has been construed not to preclude the States from regulating aspects of labor relations that involve 'conduct touch[ing] interests so deeply rooted in

> local feeling and responsibility that . . . we could not infer that Congress had deprived the States of the power to act.' *San Diego Unions v. Garmon,* 359 U.S. 236, 244 (1959).

427 U.S. at 136. I therefore conclude that the NLRA does not preempt or preclude the New Jersey Workmen's Compensation statute in question.

D. The Contract Clause.

Although ERISA's nonforfeiture provision invalidates the pension plan's offset provision, a brief discussion of the defendant's Contract Clause[5] argument is in order. Basically, defendant contends that N.J.S.A. 34:15-29 is unconstitutional because it has an unfair retroactive impact on the contractual obligations of the parties.

The recent case of *Allied Structural Steel Co. v. Spannus,* ____ U.S. ____, 57 L.Ed. 2d 727 (1978), primarily concerns itself with the Contract Clause. It points out that though the contract clause "is not . . . the draconian provision that its words might seem to imply"[6] there must be "*some* limits upon the power of a state to abridge existing contractural relationships."[7]

The historical prospective of contract clause cases suggests a number of considerations including, but not limited to: impairment of contractual relationship, public policy of the law in question, whether or not it has a retroactive effect, and reasonableness. Although it is clear that Raybestos will have to

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5. Article I, Section 10 of the United States Constitution provides that, "(n)o state shall . . . pass any . . . law impairing the obligations of contracts."

6. 57 L.Ed. at 733.

7. 57 L.Ed. at 734, emphasis in original.

expend more money than it originally planned due according to N.J.S.A. 34:15-29 it does not reach the level noted in *Spannus* where the company had to *retroactively* fund an employee benefit program to meet the criteria of the questioned law. Indeed, in the instant case, only payments after the implementation of the New Jersey Statute are contested. I think New Jersey has a strong policy interest in their workmen's compensation program and conclude that the contract clause does not bar or invalidate the New Jersey statute in question.

III. Conclusion

For the reasons stated above I find for the plaintiffs in this action. They are entitled to a permanent injunction that there be no more deductions from their monthly pension benefits as a setoff for Workmen's Compensation Benefits. Further that they are entitled to damages in the amount heretofore offset plus interest.

An appropriate order in accordance with this opinion shall be submitted by plaintiff within seven (7) days.

Very truly yours,

s/ Lawrence A. Whipple
Lawrence A. Whipple
Senior Judge, U.S.D.C.

LAW:jaa

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED FEBRUARY 15, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1668

HENRY BUCZYNSKI, ALEX BORUSOVIC, and OTHER RETIREES SIMILARLY SITUATED,

Appellees

v.

THE GENERAL MOTORS CORPORATION,

Appellant

STATE OF NEW JERSEY,

Intervenor

(D.C. Civil No. 77-1644)

No. 79-1534

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Appellees

v.

RAYBESTOS-MANHATTAN, INC., and RAYBESTOS-MANHATTAN, INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Appellants

STATE OF NEW JERSEY,

Intervenor

Appendix B

(D.C. Civil No. 78-0434)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued: January 8, 1980

Before: GIBBONS, ROSENN and GARTH, *Circuit Judges*

WEINER, STAUBACH, EDELSON & HOPMAYER
LESTER WEINER, ESQ.
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OPINION OF THE COURT

(Filed February 15, 1980)

GARTH, *Circuit Judge*

These two appeals pose a single question: whether the Employee Retirement Income Security Act of 1974 (ERISA) or the laws of New Jersey invalidate the provision of the pension plans of defendants General Motors and Raybestos-Manhattan authorizing reduction, or offset, of pension benefits by amounts received by the pensioner under a Workmen's Compensation statute. We conclude that these offset provisions are not unlawful under ERISA, and that the New Jersey statute prohibiting them is preempted by ERISA. We therefore reverse the district court orders which enjoined such offsets and which required payment to pension beneficiaries of those amounts which the pension trustees had offset in the past.

I.

Both these cases present similar fact patterns,[1] and

1. No material facts are in dispute in either case. In *Alessi*, all facts were stipulated. In *Buczynski*, the parties filed a stipulation of facts and the plaintiffs presented, at the instance of the district court, the testimony of Hubert Clodfelter. Clodfelter was a union negotiator for the United Auto Workers in 1970 when the GM pension plan was under consideration. He testified about the meaning of the "unless prohibited by law" clause in the GM offset provision. *See* note 2 *infra*.

procedural histories. General Motors (GM) and Raybestos-Manhattan (Raybestos) maintain pension plans covered by ERISA, 29 U.S.C. §1001 *et seq.* (1976). Both pension plans provide that, under certain circumstances, benefits will be reduced by the amount of Workmen's Compensation payments received by plan participants.[2]

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2. The GM offset clause provides:

> Section 2. Deductions for Workmen's Compensation
>
> In determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law, equivalent to all or any part of Workmen's Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be enacted, provided that such deductions shall be to the extent that such Workmen's Compensation has been provided by premiums, taxes or other payments paid by or at the expense of the Corporation, except that no deduction shall be made for the following:
>
> (a) Workmen's Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.
>
> (b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.
>
> (c) Workmen's Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

The Raybestos offset clause provides:

> All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is

(Cont'd)

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In 1977, New Jersey enacted a statute expressly prohibiting such offset provisions. The statute, which became effective July 14, 1977, added the underscored sentence to N.J. Stat. Ann. §34:15-29 (Supp. 1979), a part of New Jersey's Workmen's Compensation program. The complete section now provides:

> The right of compensation granted by this chapter shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this chapter shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment. *The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.*

Shortly after this statute went into effect, the plaintiffs brought class actions[3] against the defendants in the New Jersey

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> eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

3. In *Alessi*, the request for class certification was abandoned after the case was removed to the federal courts, and the action was continued on behalf of the named plaintiffs only. In *Buczynski*, the following class was certified by consent of the parties:

> The certified class consists "of those persons who are retired members of the General Motors Corporation

(Cont'd)

state courts. The named plaintiffs in each suit were former employees of the defendants who had recovered Workmen's Compensation judgments against the defendants and whose pension benefits were being reduced as a result.[4] The suits sought permanent injunctions against the offsets and recoupment damages for those offsets, alleged to be unlawful, which had already been made.

Both cases were removed by the defendants to the United States District Court for the District of New Jersey. Both district Court for the District of New Jersey. Both district judges to whom the respective cases were assigned, reached the same result. The district court judge in *Buczynski* issued two published opinions. The first opinion is reported at 456 F. Supp. 867 (D.N.J. 1978). The second opinion, which denied reconsideration, is reported at 464 F. Supp. 133 (D.N.J. 1978). The district court judge in *Alessi* issued a single, unpublished letter opinion.

Although the complaints in both cases challenged the offsets only on the basis of the New Jersey statute, both courts

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(Cont'd) Hourly-Rate Employees Pension Plan who retired under the provisions of said Pension Plan as set forth in Exhibit A-1 to the Agreement between General Motors Corporation and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, dated November 11, 1970. November 19, 1973, or November 22, 1976, who retired with benefits payable for months commencing on or after April 1, 1971, and who, at the time of their retirement, were employed by General Motors Corporation in New Jersey." *See* order filed August 9, 1978.

Buczynski v. General Motors Corp., 456 F. Supp. 867, 868 n.1 (D.N.J. 1978).

4. One of the *Alessi* plaintiffs, Helen Vogt, had not yet begun to receive her plan benefits (which were deferred termination benefits rather than retirement payments) by the time suit was filed, and thus had not yet suffered the impact of the offset clause. She was scheduled to begin receiving termination benefits on February 1, 1979.

found the offset invalid under §203(a) of ERISA, 29 U.S.C. §1053(a) (1976) (hereinafter §1053(a)). In so holding, both courts invalidated a regulation issued by the Treasury Department expressly authorizing the offset clauses, 26 C.F.R. §1.411(a)-4(a) (1979).[5] They also held that the New Jersey statute was not superseded by ERISA's preemption clause, 29 U.S.C. §1144 (1976).[6]

General Motors and Raybestos bring these appeals, challenging the district courts' conclusions that the offsets are invalid under ERISA and that the New Jersey statute is not preempted. We address these issues in turn.[7]

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5. The *Buczynski* court's first opinion made no mention of the Treasury regulation. The regulation was only considered and found invalid in the opinion responding to GM's motion for reconsideration. *See* 464 F. Supp. at 134-36.

6. The *Buczynski* court also held that it need not reach the preemption claim since it had already found that the offset was invalid under ERISA itself. *See* 456 F. Supp. at 872. Preemption was discussed, however, by assuming *arguendo* that the offset was *not* invalid under ERISA, *see id.* The court concluded that the New Jersey statute was not preempted, *id.* at 872-74.

After the *Buczynski* and *Alessi* opinions were issued, still another opinion of the district court of New Jersey addressing these questions was filed. Carpenter Technology Corp. v. Boyton, No. 78-1415 (D.N.J., Dec. 12, 1979). *Carpenter* diverged from *Buczynski* and *Alessi* by holding that ERISA did, indeed, preempt the New Jersey statute. *See* our discussion *infra* at Part III. The *Carpenter* court reached the same result as its predecessors, however, by holding that the Workmen's Compensation offset was prohibited by ERISA itself.

7. The State of New Jersey has intervened in both *Alessi* and *Buczynski*. In addition, several *amicus* briefs have been filed in *Buczynski*. The United States as *amicus* urges reversal of the district court. So do several steel companies, who are involved in litigation on this same issue in the Western District of Pennsylvania. These steel companies are: Crucible, Inc., Jones & Laughlin Steel Corp., Mesta Machine Co., Pullman-Standard, Shenango, Inc., United States Steel Corp., and Wheeling-Pittsburgh Steel Corp. The individual

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II.

The plaintiffs claim that the defendants' offset is rendered unlawful by ERISA's antiforfeiture provision, 29 U.S.C. §1053(a) (1976). This section provides in pertinent part:

> (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

A Treasury regulation, however, addresses the permissibility of offsets under ERISA's antiforfeiture provision and expressly authorizes such offsets, declaring them *not* to be prohibited forfeitures. This regulation provides in pertinent part:[8]

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steelworkers, who are suing their employers on this issue, urge affirmance. The steelworkers are Carmen F. Gargon, Frank E. Doumont, Robert Milanovich, Wayne C. Banks, Michael E. Barna, Paul J. Miller, and George Zihol. The Gray Panthers, one of the *amici* permitted to file in *Buczynski*, urge affirmance as well.

8. This Treasury regulation was *not* issued under ERISA's antiforfeiture requirement found at 29 U.S.C. §1053(a) (1976), but rather under an antiforfeiture provision included in the Internal Revenue Code requirements for pension plans, 26 U.S.C. §411(a) (1976). The tax code requirement for pension plans was enacted in Title II of ERISA. ERISA expressly provides that Treasury Department regulations under the tax code pension provisions shall apply to the analogous provisions of ERISA codified in Title 29 of the United States Code. 29 U.S.C. §1202(c) (1976) provides:

> (c) Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of Title 26 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation,

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> Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits.

26 C.F.R. §1.411(a)-4(a) (1979).

In determining the legality of the Workmen's Compensation offset, then, we must begin our inquiry with this regulation, which, if held to be valid, would require us to sustain the offset provisions in the General Motors and Raybestos pension plans.

A.

In assessing the validity of 26 C.F.R. §1.411(a)-4(a) (1979), we first turn to a consideration of the character of the regulation. In this court's recent opinion in *Baker v. Otis Elevator Co.*, No. 79-1185 (3d Cir., Nov. 13, 1979), which also concerned the validity of a Treasury regulation interpreting a

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> vesting, and funding standards set forth in parts 2 and 3 of subtitle B of subchapter I of this chapter [which include 29 U.S.C. §1053(a)]. Except as otherwise expressly provided in this Act, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of Title 26 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of Title 26.

We thus conclude that the Treasury regulation issued under the antiforfeiture requirement of 26 U.S.C. §411(a) (1976) must, if valid, control our interpretation of 29 U.S.C. §1053(a) (1976) as well. None of the parties here contends otherwise. This issue is discussed at greater length in Baker v. Otis Elevator Co., No. 79-1185, slip. op. at 5-8 (3d Cir., Nov. 13, 1979).

provision of ERISA, we recognized a distinction between two types of administrative regulations, with a corresponding distinction in the appropriate standard of review. We there stated:

> There can be no question but that the regulation with which we are here concerned is a legislative regulation which was issued pursuant to a clear delegation of rule making authority, *see* U.S.C. §1202(c) (1976). As Professor Davis has explained,
>
> A legislative rule is the product of an exercise of delegated legislative power to make law through rules. An interpretative rule is any rule an agency issues without exercising delegated legislative power to make law through rules.
>
> The distinction between the two kinds of rules is fundamental. . . . Valid legislative rules have about the same effect as valid statutes; they are binding on courts. . . .
>
> [By contrast, however,] [c]ourts always have power to substitute their judgment for administrative judgment as to the content of interpretative rules, but they refrain in varying degrees from substituting judgment in various circumstances. . . .
>
> 2 K.C. Davis, Administrative Law Treatise, §7:8 at 36-37 (1979). We recognize the distinction in the nature of the two types of rules, leading in turn to a distinction in our standard of review. Our scope of review of legislative rules is far

> more restricted than the scope of our review of interpretative rules. *See id.*, at 37.

Slip. op. at 9-10.

After an analysis of the Supreme Court's decision in *Batterton v. Francis*, 432 U.S. 416 (1977), which addressed the same issue, we concluded in *Baker* that, to sustain a legislative regulation, "we need only determine . . . that its promulgation is not an abuse of discretion, that it is neither arbitrary or capricious, nor contrary to the governing statutory section and ERISA as a whole," slip op. at 11-12.

As in *Baker*, the Treasury Department regulation at issue here is plainly legislative in nature; it was issued pursuant to the same delegation of rule-making power as the regulation in *Baker*, which was there held to be legislative. *See* slip op. at 9; 29 U.S.C. 1202(c) (1976). It is thus subject to the limited review prescribed in *Baker*.[9]

The plaintiffs contend that the Treasury regulation must be struck down because it is inconsistent with the governing statutory provision, ERISA's antiforfeiture requirement, 29 U.S.C. §1053(a) (1976). Before turning to their claim, we think it is appropriate to acknowledge that fidelity to the standard of review set forth in *Baker* and *Batterton, supra*, requires that a legislative regulation be invalidated only for a clear and manifest conflict with the governing statute. Overturning a legislative regulation where the statute may arguably be given conflicting readings, or where the conflict between the regulation and the

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9. Neither district court here recognized that 26 C.F.R. §1.411(a)-4(a) (1979) is a *legislative* regulation. Other courts that have invalidated this regulation have failed as well to recognize this salient characteristic. *See* note 10 *infra*. By failing to accord this regulation the appropriate degree of deference, these courts have impermissibly substituted their own judgment as to the interpretation of the statute for that of the Treasury Department.

statute is not plain, does violence to the congressional intent to delegate rule-making authority to the administrative agency. Approached from this perspective, the conclusions reached by the district courts in *Buczynski* and *Alessi,* that the regulation is inconsistent with 29 U.S.C. §1053(a) (1976), cannot be sustained: The legislative history affirmatively supports the Treasury regulation, and, at the very least, any conflict between the regulation and the statute, if one indeed exists, is clearly insufficient to mandate invalidation.

B.

The district courts here, as well as the other courts that have invalidated this regulation,[10] make similar syllogistic arguments to demonstrate the conflict with ERISA which they perceive. They begin with §1053(a), which provides broadly that pension benefits must be nonforfeitable. They then focus on §1053(a)(3), which specifically exempts certain pension plan provisions from the nonforfeitability rule. The list of these exceptions includes, *inter alia,* nonpayment of benefits if the plan participant dies, §1053(a)(3)(A), and suspension of benefits if the participant takes a job with an employer of benefits if the participant takes a job with an employer in the same industry, §1053(a)(3)(B). This list, however, does not include offsets for Workmen's Compensation. Finally, these district courts add to §1053(a) the definition of "nonforfeitable" found in 29 U.S.C. §1002(19) (1976), which provides:

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10. In addition to *Buczynski* and *Alessi,* offset provisions have been declared unlawful, and the Treasury regulation has been invalidated, in Strong v. Bucyrus-Erie, 472 F. Supp. 1089 (E.D. Wis. 1979); Utility Workers' Union v. Consumers Power Co., 453 F. Supp. 447 (E.D. Mich. 1978), *appeal docketed,* No. 78-1402 (6th Cir., August 2, 1978); and Carpenter Technology Corp. v. Boyton. No. 78-1415 (D.N.J., Dec. 12, 1979). Offset provisions, and the Treasury regulation authorizing them, have been *upheld* in Bordine v. Evans Products Co., 453 F. Supp. 19 (E.D. Mich. 1978); Pavlovic v. Chrysler Corp., No. 7-70438 (E.D. Mich., Jan. 10, 1978), and Carlson v. Bundy Corp., No. 6-72272 (E.D. Mich. 1977).

> (19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions *shall not be treated as forfeitable merely because the plan contains a provision described in section 1053(a)(3) of this title.* (emphasis added).

Armed with these provisions, these district courts reason as follows: all reductions in benefits are forfeitures; all forfeitures are prohibited by §1053(a), with the sole exceptions being those listed in §1053(a)(3); Workmen's Compensation offsets are not included in the list of permissible forfeitures in §1053(a)(3); *ergo,* Workmen's Compensation offsets are prohibited forfeitures. Thus, they conclude that the Treasury regulation authorizing offsets for benefits provided under Federal or State law is in conflict with ERISA, and is therefore invalid, because it expands the class of permissible forfeitures beyond those specifically set forth in §1053(a)(3). The *Buczynski* district court, in its second opinion, makes the argument as follows:

> Another difficulty with the defendant's interpretation results from ERISA's handling of the term "nonforfeitable". 29 U.S.C. §1002(19) provides the definition. Under this section, only the exceptions specifically included in §1053 are consistent with nonforfeitability. Worker's compensation does not appear. Only deductions included in §1053(a)(3) are exceptions to §1002's definition of nonforfeitability.

> Based on these cases, I must conclude it is clear that Congress expected that pension benefits would generally be nonforfeitable, and that employees would forfeit benefits only under narrowly defined circumstances. Regulations promulgated must assist in achieving this goal. Treas. Reg. §1.411(a)-4(a), by impeding the attainment of this goal, is inconsistent with the statute. Accordingly, the defendant's reliance on it as a source of expanding the scope of permissible deductions from pension payments is misplaced. Section 1053 forbids the offsets found in the defendant's plan.

464 F. Supp. at 135-36 (footnotes and citations omitted).

Thereafter, the district court in *Alessi,* relying on the *Buczynski* opinions, reached the same result. *See Alessi v. Raybestos-Manhattan,* No. 78-0434, slip. op. at 5 (D.N.J., Feb. 15, 1979).

While this argument is not without some superficial appeal, the courts' syllogism is defective, and we must reject it. Understanding this defect, however, requires some explanation of the regulation of pension plans by the Internal Revenue Service before and after ERISA was enacted.

Prior to enactment of ERISA in 1974, the Internal Revenue Code set forth a variety of requirements that had to be met by pension plans in order to qualify for favorable tax treatment. One requirement was that the plans be nondiscriminatory. This tax code requirement was set forth in 26 U.S.C. §401(a)(4) & (5). On the passage of ERISA, these sections were amended, but the amendments did not alter the basic aim of the statute. Discrimination in contributions or benefits under a pension plan was still prohibited. These sections now provide in pertinent part:

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(a) Requirements for qualification. — A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

* * *

(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

(A) officers,

(B) shareholders, or

(C) highly compensated.

* * *

(5) . . . [A] plan [shall not] be considered discriminatory . . . merely because the contributions or benefits of or on behalf of the employees under the plan . . . differ because of any retirement benefits created under State or Federal law. . . .

Under these sections, the IRS prior to ERISA had extensive experience with a pension plan provision similar to the offset clause challenged here. That provision was the offset of Social Security benefits against pension benefits. In its interpretation of the clause excerpted above from 26 U.S.C. §401(a)(5), the IRS had long permitted pension plans to offset pension benefits by the amount of Social Security benefits that a plan participant received. The first such regulation was issued in 1943, and it simply reiterated the statutory language quoted above. The current version of this regulation, issued in 1960, provides as follows:

> (b) A plan . . . under which the contributions or benefits differ because of any retirement benefit created under State or Federal law, will not be discriminatory because of such exclusion or difference, provided the total benefits resulting under the plan and under such law establish an integrated and correlated retirement system satisfying the tests of section 401(a).

26 C.F.R. §1.401-4(b) (1979).

The parties do not dispute that this regulation permits offset of pension benefits by the amount of Social Security benefits received.

In enacting ERISA, Congress was familiar with the practice of the IRS allowing such offset provisions. Congress was also aware that the IRS, while allowing such offsets, would not permit any *increase* in the rate of offset based upon any *increase* in the level of Social Security benefits occurring after a retiree began to receive his pension. Congress sought to codify this administrative practice of not permitting an increased offset based upon *increased* Social Security benefits, and did so by enacting §1021(e) of ERISA, which is codified at 26 U.S.C. §401(a)(15) (1976). This section provides:

> (15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part . . . such benefits are not *decreased* by reason of *any increase* in the benefit levels payable under title II of the Social Security Act or *any increase* in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be. (emphasis added).

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Congress's understanding in enacting this section is made clear in the report of the House Ways and Means Committee:

> Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration [*i.e.*, offset] procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.
>
> Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.
>
> These changes do not affect the ability of plans to use the integration procedures to reduce

> the benefits that they pay to individuals who are currently covered when social security benefits are liberalized.

H.R. Rep. No. 93-807, 3 U.S. Code Cong. & Admin. News 4670, 4695-96 (1974).

Despite certain misgivings about offset, or integration practices expressed later in this report, Congress chose *not* to bar the Social Security offset entirely, but merely to prohibit *increases* in the amount of the offset based on *increases* in the amount of Social Security benefits.

A number of conclusions can be drawn from this history, conclusions which shed light on the analysis on which the *Alessi* and *Buczynski* courts relied in striking down the Treasury regulation. In choosing only to limit *increased* Social Security offsets rather than bar them entirely in §401(a)(15), Congress gave its implicit approval to the practice of permitting offsets against pension plan benefits — in that instance, an offset of Social Security benefits against pension plan benefits. Further, since §401(a)(15) was enacted at the same time as §1053(a)'s requirement that pension benefits be nonforfeitable, we must conclude that the offset of Social Security benefits implicitly approved in the former section was *not* simultaneously rendered illegal by the latter section's requirement of nonforfeitability.

This conclusion reveals the primary defect in the *Buczynski/Alessi* district court analyses. Those courts reasoned, as noted above, that all benefit reductions are forfeitures, and all forfeitures are impermissible except for the four exceptions listed in §1053(a)(3). Yet Congress has approved the Social Security offset, and that offset docs not appear among the permissible forfeitures under §1053(a)(3). Thus, the district courts' reasoning runs afoul of Congress's approval of the Social Security offset. If all reductions in benefits are forfeitures, and all forfeitures are

prohibited with the exceptions listed in §1053(a)(3), then, under the district courts' reasoning, Social Security offsets should also be prohibited. Yet, as we have seen, this is not the case. It is true, as the courts reasoned, that all *forfeitures* are prohibited with the exception of those listed in §1053(a)(3), but it *cannot* be true that all reductions in benefits are necessarily forfeitures. Congress's implicit approval of the Social Security offset compels the conclusion that such an offset is *not* a forfeiture. Thus, the very basis on which the district courts found the Treasury regulation in issue here to conflict with §1053(a) is in error.

The plaintiffs contend, however, that the Workmen's Compensation offset cannot be sustained on the strength of Congress's approval of the Social Security offset. They contend that even if the Social Security offset is not a forfeiture under ERISA, the Workmen's Compensation offset *is*. Social Security benefits and pension benefits, they point out, are both designed to compensate for wages lost as a result of old age, and therefore the Social Security offset simply avoids a duplication of benefits directed to the same end. Workmen's Compensation, by contrast, is designed to compensate for losses flowing from employment related injuries; thus, the Workmen's Compensation offset, unlike the Social Security offset, cannot be defended as a means to avoid duplication of benefits.

The plaintiffs' argument here fails to recognize the breadth of the Social Security program. Social Security provides benefits for *disabilities, see* 42 U.S.C. §423 (1976), as well as benefits for old age. Thus, the Social Security offset that Congress has approved includes, perforce, an offset against pension benefits for *disability* benefits. The Social Security offset, since it includes an offset of disability benefits, makes any purported distinction between the Social Security offset and the Workmen's Compensation offset meaningless. The disability offset, included within the Social Security offset, thus compels

us to reject any purported distinction between Social Security offsets and Workmen's Compensation offsets.

And the same argument may be made with respect to benefits provided under the Railroad Retirement Act, 45 U.S.C. §231 *et seq.* (1976). The same implicit congressional approval of offsets of Social Security benefits that appears in 26 U.S.C. §401(a)(15)(1976) is accorded to offsets of Railroad Retirement Act benefits in 29 U.S.C. §1056(b)(1976).[11] Railroad retirement benefits include payments for disability as well as payments for old age. *See* 45 U.S.C. §231a(a)(1)(iv) & (v) (1976). Thus, Congress has implicitly approved two disability offsets against retirement payments. As a result, reliance on the difference in the character of the offsets (retirement benefits as opposed to disability benefits) is misplaced.

The conclusion that not all benefit reductions are forfeitures; that, specifically, a Social Security offset is not a forfeiture; and that the district courts' reasoning is erroneous, is enough by itself to require upholding the Treasury regulation under the review of legislative regulations prescribed by *Baker v. Otis Elevator* and *Batterton v. Francis.* Once we conclude that Social Security offsets are not forfeitures, in the absence of clear evidence that Congress intended to prohibit Workmen's Compensation offsets, it cannot be said that a regulation allowing Workmen's Compensation offsets is so contrary to

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11. 29 U.S.C. §1056(b) provides in pertinent part:

> [A] plan may not *decrease* benefits of such a participant by reason of any increase in the benefit levels payable under title II of the *Social Security Act or the Railroad Retirement Act of 1937,* or any *increase* in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation. (emphasis added).

ERISA that it cannot stand. Thus, we conclude that there is an insufficient basis on which to strike down the regulation.

C.

Our conclusion that a proper interpretation of ERISA requires giving binding effect to this regulation receives further support in the legislative history of that Act. That history demonstrates to our satisfaction that Congress did not disapprove of Workmen's Compensation offsets as well as Social Security offsets.

In the course of IRS administration of the nondiscrimination requirement for pension plans under 26 U.S.C. §401(a)(4) & (5)(1976), the Service issued a revenue ruling explicitly approving an offset for Workmen's Compensation:

> Section 401(a)(5) of the Code provides that a plan shall not be considered discriminatory merely because the contributions or benefits of or on behalf of the employees under the plan differ because of any retirement benefits created under State or Federal law.
>
> The effect of section 401(a)(5) of the Code is to permit total benefits inclusive of those provided under the social security or similar program, to be used for comparative purposes. *See* Part 4(j) of Revenue Ruling, 65-178, C.B. 1965-2, 94. A program, like the social security program, that requires employer contributions and makes benefits available to the general public is a similar program for purposes of Part 4(j) of Revenue Ruling 65-178.

> Further, section 401(a)(5) of the Code does not provide for the offset of benefits under a qualified plan by disability damages recovered from an employer in a common law action. Such disability damages are not paid under a program similar to the social security program and offsetting retirement benefits by disability damages of this type would result in the plan being used to satisfy the employer's liability for damages.
>
> Since the benefits payable under a *workmen's compensation law or occupational diseases law* are available to the general public, it is held that *benefits payable under such laws are acceptable as an offset against benefits payable under the qualified pension plan* in the instant case. However, benefits under the plan may not be offset by disability damages recovered by an employee in a common law action against the employer. (emphasis added).

Rev. Rul. 68-243, 1968-1 C.B. 157, 158.

The substance of this ruling has been republished by the IRS on two occasions.[12]

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12. In 1969, the IRS published an extensive Revenue Ruling consolidating and updating the rules on qualification of pension plans under 26 U.S.C. §401 (1976). This ruling contained the same position expressed in Revenue Ruling 68-243:

> (4) *Integration With Benefits Provided Under Other Public Programs.* — Benefits provided under a pension, annuity, profit-sharing, or stock bonus plan may be integrated with those provided under a state of Federal program that, like the social security program, requires

(Cont'd)

Appendix B

The legislative history of ERISA indicates that Congress was familiar with the IRS rules on integration of benefits in pension plans, and intended that these rules be preserved. The report of the Conference Committee states:

> Moreover, the conferees intend that the anti-discrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals.

H. Conf. Rep. No. 93-1280, 3 U.S. Code Cong. & Admin. News 5038, 5058 (1974).

This history of IRS practice with respect to Workmen's Compensation offsets, and of congressional preservation of the antidiscrimination rules, suggests that, if anything, Congress approved of Workmen's Compensation offsets. Thus, the evidence indicates that the Treasury regulation in issue here conforms to congressional intent. Accordingly, because the

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(Cont'd) employer contributions and makes benefits available to the general public. *Thus, benefits payable under a state workmen's compensation law or an occupational diseases law may be an acceptable offset against benefits payable under a qualified plan.* However, benefits payable under a qualified plan may not be offset by disability damages recovered by an employee in a common law action against the employer. *See* Rev. Rul. 68-243, C.B. 1968-1, 157. (emphasis added).

Rev. Rul. 69-421, part 4, (j)(4), 1969-2 C.B. 61, 72.

This same provision was included without change in a special IRS publication in 1972. Internal Reveneue Service, Pub. No. 778, Guides for Qualification of Pension, Profit-Sharing, and Stock Bonus Plans 15 (1972).

regulation is not contrary to § 1053(a) and the provisions of ERISA as a whole, we must sustain its validity.[13]

---

13. An additional argument in support of the position taken by GM and Raybestos was made by the *amicus* steel companies. They called our attention to a proposal made in Congress by Senators Harrison Williams and Jacob Javits, two of the original sponsors of ERISA. The proposal, if enacted into law, which it was not, would have prohibited Workmen's Compensation offsets. The proposal states:

> (a) Section 206(b) of such Act [ERISA] is amended
>
> * * * *
>
> (3) by adding at the end thereof the following new sentence: "A pension plan may not reduce or suspend retirement pension benefits being received by a participant or beneficiary or retirement pension benefits in which a participant who is separated from the service has a nonforfeitable right by reason of any payment made to the participant or beneficiary by the employer maintaining the plan as the result of an award or settlement under or pursuant to a workers' compensation laws."

As we understand the argument, the steel companies contend that there would have been no need for the introduction of such a proposal unless ERISA as originally enacted, and as currently in force, permitted Workmen's Compensation offsets.

While certainly plausible, we do not attribute much weight to this argument. The difficulty with it, as with all arguments of this nature, is that the understanding of the amendment's sponsors is open to conflicting interpretations. It is possible that the sponsors believed that such offsets were permissible under the original ERISA. It is also possible, however, that they believed that such offsets were *impermissible* under ERISA as enacted, and sought the amendment to override the Treasury regulation that erroneously, in their view, authorized such offsets. Thus, the argument cuts both ways.

Two additional arguments, attacking our conclusion that the regulation is valid, are made by *amici* Gray Panthers and Steelworkers. Neither of these arguments merits discussion. They argue that the regulation conflicts with 29

(Cont'd)

Appendix B

III.

Our conclusion that the Treasury regulation must be sustained does not, by itself, require granting judgment in favor of the defendants. For even if ERISA does not prohibit the Workmen's Compensation offset in the GM and Raybestos pension plans, New Jersey's 1977 statute *does*. This statute, as noted earlier, provides in relevant part:

> The right of compensation granted by this chapter [the workmen's compensation act] may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.

N.J. Stat. Ann. §34:15-29 (Supp. 1979).

The statute, of course, prohibits the offset clause challenged here, and the defendants do not contend otherwise. They do claim, however, that this statute is superseded by ERISA's preemption provision, 29 U.S.C. §1144(a)(1976).[14] This section states:

(Cont'd)

U.S.C. §1056(d)(1) (1976), which provides that pension plan benefits "may not be assigned or alienated," and with 29 U.S.C. §1103(c)(1) (1976), which provides that "the assets of a plan shall never inure to the benefit of any employer, and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." In our opinion, the discussion and analysis found in part II, *supra,* which demonstrates an overriding congressional intent to permit Workmen's Compensation offsets against pension benefits, disposes of these contentions as well.

14. The State of New Jersey, which has intervened in both *Buczynski* and *Alessi,* asks us to abstain from deciding the preemption question. It suggests that if we await a New Jersey state court interpretation of the statute, it may

(Cont'd)

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> (a) Except as provided in subsection (b) of this section,[15] the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

The district court judge in *Buczynski,* despite his conclusion that the offset provision was unlawful under ERISA itself, nevertheless discussed the preemption issue. The district court in *Buczynski,* followed thereafter by *Alessi,* concluded that the New Jersey statute was not preempted:

> It is true that under ERISA, 29 U.S.C. §1144(a), all state laws which "relate to" any

(Cont'd)

obviate our consideration of the preemption claim. The state suggests that the New Jersey courts are likely to hold that N.J. Stat. Ann. §34:15-29 (Supp. 1979) protects employees who obtained Workmen's Compensation judgments after the statute went into effect. Since all the plaintiffs in *Alessi* and all the named plaintiffs in *Buczynski* recovered their judgments before the effective date of the statute, it does not, New Jersey argues, protect them and there is no need to determine whether the statute is preempted by ERISA.

However, we decline to abstain for two reasons. First, the construction of the statute that New Jersey proposes will not forever remove the need for consideration of the preemption question. It will simply postpone consideration until a claim is made by an employee who recovered a Workmen's Compensation award after July 14, 1977 and it appears to us that such a claim is not far off. Second, and of greater importance, the certified class in *Buczynski* appears to include persons who recovered Workmen's Compensation judgments after the statute's effective date. *See* note *3 supra.* Thus, there are plaintiffs in this suit who are protected by the statute regardless of how the New Jersey courts may construe the statute. In this posture, then, we are obliged to resolve the preemption claim.

15. None of the exceptions referred to are applicable here, and the plaintiffs do not argue to the contrary.

> employee benefit plan covered by ERISA are superseded. Although the New Jersey statute undoubtedly "relates to" pension plans in the broadest dictionary sense of that term, this court cannot agree with the defendant that the New Jersey statute "relates to" pension plans within the meaning of ERISA, 29 U.S.C. §1144(a). Congress, to be sure, must have intended by that language to occupy the entire field of pension plan law to the exclusion of all state regulation. However, the New Jersey statute at issue here is in no way concerned with pension plans *qua* pension plans. On the contrary, the New Jersey statute is solely concerned with protecting the employee's right to worker's compensation disability benefits. . . .
>
> Congress, by enacting ERISA, and the specific preemptive language of 29 U.S.C. §1144(a), could not have intended to prohibit states from protecting an employee's state-created right to worker's compensation benefits by enacting laws such as the one New Jersey enacted here.

456 F. Supp. at 872-73 (citations omitted).

Our reading of ERISA satisfies us that ERISA *does* preempt N.J. Stat. Ann. §34:15-29 (Supp. 1979). Thus, we cannot agree with the district courts that have concluded otherwise.[16] The primary purpose of the statute, and its direct

16. As previously noted, *see* note *6 supra,* still another New Jersey district court has addressed this preemption question, and agrees with our conclusion that the New Jersey statute is preempted by ERISA. *See* Carpenter Technology Corp. v. Boyton, No. 78-1415, slip op. at 5-9 (D.N.J., Dec. 12, 1979).

effect, is to prohibit pension plans from offsetting Workmen's Compensation benefits against pension retirement benefits. It simply cannot be said that this statute does not concern pension plans *qua* pension plans (*Buczynski*), or that its effect on such plans is merely collateral (*Alessi*). In our opinion, the *only* purpose and effect of the statute is to set forth an additional statutory requirement for pension plans; this purpose negates the characterization of the statute attributed to it by the New Jersey district courts.

Further, ERISA preempts state statutes that *"relate to* any employee benefit plan," 29 U.S.C. §1144(a) (1976) (emphasis added). The view taken by the *Buczynski* court, that ERISA preempts only statutes concerning "pension plans *qua* pension plans," could be accepted only if ERISA's preemption clause were much more narrowly drawn than it is. Here, the preemption clause, reaching statutes that "relate to" pension plans, has an obviously broader scope.

In noting that "the New Jersey statute undoubtedly 'relates to' pension plans in the broadest dictionary sense of that term," 456 F. Supp. at 872, the district court in *Buczynski* appears to concede the difficulty of its narrow interpretation. The court reasoned, however, that Congress could not have intended the term to be given its full breadth. Yet the legislative history of the clause, as well as the plain meaning of its language, belie this claim. The legislative history of the clause has been detailed elsewhere and we need not repeat it here. *See Wadsworth v. Whaland,* 562 F. 2d 70, 76-77 (1st Cir. 1977), *cert. denied,* 435 U.S. 980 (1978); *National Carriers' Conference Comm. v. Heffernan,* 454 F. Supp. 914, 915-17 (D. Conn. 1978); *Hewlett-Packard Co. v. Barnes,* 425 F. Supp. 1294, 1297-1300 (N.D. Cal. 1977), *aff'd per curiam,* 571 F. 2d 502 (9th Cir.), *cert. denied,* 439 U.S. 831 (1978). We need only note its most prominent features: that the original House and Senate provisions were significantly narrower, and were rejected by the Conference

Committee in favor of the current provision; and that explanations of the Conference substitute given on the floor of both chambers make plain that the preemptive intent is just as broad as its language suggests. Thus, it is clear that the preemption provision is intended to be read in its normal dictionary sense, and that the New Jersey statute prohibiting Workmen's Compensation offsets cannot stand.[17]

IV.

We conclude that the Workmen's Compensation offset in General Motors's and Raybestos's pension plans is not a forfeiture rendered invalid by ERISA's antiforfeiture provision, 29 U.S.C. §1053(a) (1976). In so concluding, we sustain the Treasury regulation expressly authorizing provisions of this type, 26 C.F.R. §1.411(a)-4(a) (1979). We also conclude that the New Jersey statute that prohibits these offsets, N.J. Stat. Ann. §34:15-29 (Supp. 1979), is preempted by ERISA, 29 U.S.C. §1144(a) (1976).

In light of our conclusions, which are contrary to the conclusions reached by the district courts in both *Buczynski* and *Alessi,* we will vacate the respective orders dated April 3, 1979 (*Buczynski*) and March 1, 1979 (*Alessi*) which permanently enjoin the defendants from offsetting Workmen's Compensation benefits and which required that reimbursement be made for amounts offset in the past; we direct that the district courts enter judgment for the defendants. Each side shall bear its own costs.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Third Circuit

17. Raybestos, in the district court in Alessi, contended that the New Jersey statute should be struck down on at least two other grounds. First, that the statute was preempted under the National Labor Relations Act, and, second, that it was an unconstitutional impairment of the obligation of contracts. The court rejected both of these attacks, slip op. at 8-9. In light of our conclusion that the statute is preempted by ERISA itself, we need not reach these issues.

APPENDIX C — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED FEBRUARY 15, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1534

ALESSI, JOSEPH, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKS, HELEN VOGT AND T. EDWARD WHITE

vs.

RAYBESTOS-MANHATTAN, INC., AND RAYBESTOS-MANHATTAN, INC., EMPLOYEE RETIREMENT PLAN, JOINTLY, SEVERALLY AND IN THE ALTERNATIVE,

Appellants

STATE OF NEW JERSEY,

Intervenor

(D. C. Civil No. 78-0434)

No. 79-1668

BUCZYNSKI, Henry, ALEX BORUSOVIC AND OTHER RETIREES SIMILARLY SITUATED

vs.

THE GENERAL MOTORS CORPORATION,

Appellant

Appendix C

STATE OF NEW JERSEY,

Intervenor

(D. C. Civil No. 77-1644)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: GIBBONS, ROSENN and GARTH, *Circuit Judges*

These causes came on to be heard on the records from the United States District Court for the District of New Jersey and were argued by counsel on January 8, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court dated April 3, 1979 and appealed at our No. 79-1668, and dated March 1, 1979, and appealed at our No. 79-1534, be, and the same are hereby vacated and the causes are remanded to the said District Courts for entry of judgments for the defendants, all in accordance with the opinion of this Court. Each side shall bear its own costs.

ATTEST:

s/ Thomas F. Quinn
Clerk

February 15, 1980

Certified as a true copy and issued in lieu of a formal mandate on March 27, 1980.

Test: THOMAS F. QUINN

Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX D — ORDER DENYING PETITION FOR REHEARING DATED MARCH 19, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1534

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Plaintiffs-Appelless,

v.

RAYBESTOS-MANHATTAN INC., and RAYBESTOS-MANHATTAN, INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Defendants-Appellants

STATE OF NEW JERSEY

Intervenor

Present: SEITZ, *Chief Judge,* ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, and SLOVITER

The petition for rehearing filed by plaintiffs-appellees in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in

regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ Leonard I. Garth
Judge

Leonard I. Garth, U.S.C.J.

Dated: March 19, 1980

APPENDIX E — NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket #79-1534

Joseph Alessi, Raymond Buisson, Stephen Michalski, Charles Repka, Helen Vogt and T. Edward White,

Plaintiff-Appellants

v.

Raybestos-Manhattan, Inc., and Raybestos-Manhattan Inc. Employee Retirement Plan, jointly, severally or in the alternative,

Defendant-Appellees

Notice is hereby given that Joseph Alessi, Raymond Buisson, Stephen Michalski, Charles Repka, Helen Vogt, and T. Edward White, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order of the United States Court of Appeals for the Third Circuit reversing the Judgment of the United States District Court for the District of New Jersey and dismissing plaintiff-appellants' complaint, entered in this action on February 15, 1980. Plaintiff-Appellants' Petition For Rehearing in Banc was denied on March 19, 1980.

This appeal is taken pursuant to 28 U.S.C. 1254(2).

GELMAN & GELMAN
Attorneys for Plaintiff-Appellants
45 Church Street
Paterson, N.J. 07505

/s/
MICHAEL S. SCAROLA

DATED: April 22, 1980

APPENDIX F — LETTER ACKNOWLEDGING FILING OF NOTICE OF APPEAL

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia 19106

Thomas F. Quinn — Telephone

Clerk — 215-597-2995

May 2, 1980

Michael S. Scarola, Esquire
Gelman & Gelman
45 Church Street
Paterson, NJ 07505

Re: Joseph Alessi, et al. vs. Raybestos-Manhattan, Inc., et al
State of New Jersey, Intervenor No. 79-1534

Dear Mr. Scarola:

This will acknowledge receipt on April 25, 1980 of Plaintiff-Appellants "Notice of Appeal to the Supreme Court of the United States" in the above-entitled case.

The Notice of Appeal has been filed as of April 25, 1980, placed on our docket and in the files of the case in this Court.

Very truly yours,

s/ T.F. Quinn
Clerk

bjr

cc: S. Joseph Fortunato, Esquire
Michael S. Bokar, Esquire

APPENDIX G — OPINION OF THE HONORABLE CLARKSON S. FISHER FILED DECEMBER 12, 1979

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 78-1415

CARPENTER TECHNOLOGY CORPORATION, et al,

Plaintiffs,

v.

JAMES E. BOYTON,

Defendant.

HON. CLARKSON S. FISHER

The Carpenter Technology Corporation (hereinafter "Carpenter") and others associated with the Pension Plan for Employees of Carpenter (hereinafter "Plan") bring this action for a declaratory judgment, 28 U.S.C. §2201, and for related relief. They seek clarification of the rights of James E. Boyton, a retired Carpenter employee, under the Plan. At issue is the validity of a Plan provision which permits the plaintiffs to deduct from Boyton's monthly retirement pension benefits the amount of a workmen's compensation award he receives pursuant to a decree of the state of New Jersey. This court has jurisdiction to determine this controversy pursuant to §502 of the Employees Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132. Presently before the court are cross motions for summary judgment. *F.R. Civ. P.* 56. Since no genuine issues of material fact exist, resolution by summary judgment is appropriate.

Appendix G

I. BACKGROUND

A. Description of the Plan.

The Plan is the fruit of collective bargaining between Carpenter and the United Steelworkers of America. It was initially adopted in 1949. At the time Boyton retired, the Plan contained amendments effective August 1, 1972. *See* Complaint, filed June 23, 1978, Ex. A. Subsequent to his retirement the Plan was amended and restated effective August 1, 1975 (hereinafter "Restated Plan"). *See id.* Ex. B. Although Boyton received an increase in benefits pursuant to retroactive provisions of the Restated Plan, the pivotal provisions of the Plan were not altered by the 1975 amendments. The Plan and the Restated Plan are collectively referred to as the "Plans".

Section 2 of the Plan and Restated Plan details the retirement options available to Carpenter's employees. When Boyton retired in 1974 the Plan offered six retirement options. In addition to normal retirement, early retirement and disability retirement options, *see* Plan §§2.1, 2.3, 2.4, the Plan provided a 30-year retirement option without regard to age for any employee "who shall have had at least 30 years continuous service". *Id.* §2.2. *See also* Restated Plan §2.3.

Section 3 of the Plan and Restated Plan sets out the method of determining the amout of pension to be awarded a retiree. Pension payments come in two forms. First, a special initial pension amount, or special payment, is granted as a lump sum to all retirees except those receiving disability pensions. Plan §3.1(a); Restated Plan §3.1(a). In addition the Plan provides for a regular pension amount, payable monthly. Plan §3.1(b); Restated Plan §3.1(b). The regular pension amount paid to an employee retiring on the 30-year option is determined in accord with Plan §3.3 and is not at issue here.

Appendix G

Section 3 also provides for certain deductions to be made from the regular pension amount. Deductions are provided in respect of public and other pensions, Plan §§3.8, 3.9, of severance allowances, Plan §3.10, and of occupation disability payments, Plan §3.11. In pertinent part, this last provision states:

> 3.11 Any amount paid to or on behalf of any participant on account of injury or occupational disease incurred in the course of his employment by the Company . . . in the nature of a permanent disability, whether pursuant to Workman's Compensation, Occupational Disease, or similar statutory law, . . . shall be deducted from or charged against any regular pension otherwise payable under the Plan . . .

See also Restated Plan §3.10.

B. Defendant's Work History.

Defendant commenced employment with Carpenter on April 4, 1944 at the age of 17. He worked as a full-time Carpenter employee until his retirement on August 1, 1974 at the age of 47 under Carpenter's 30-year retirement option. Defendant applied for and was awarded both a special payment and regular pension amount. The lump sum special payment was awarded in the amount of $3,141.43. His regular monthly retirement benefit, in the amount of $344.94 per month, commenced on November 1, 1974. Due to upwards adjustments made pursuant to the Restated Plan, as of March 1978 defendant's monthly benefit amounted to $387.64 per month. From November 1, 1974 to March 31, 1978, the total amount of defendant's monthly benefit was $15,194.90.

In December of 1974, after applying for and receiving his regular retirement benefits, defendant filed a petition with the

state of New Jersey, Department of Labor and Industry, Division of Worker's Compensation, seeking an award of compensation benefits pursuant to N.J.S.A. 34:15-7 *et seq.* Defendant's petition was hotly contested, but after lengthy administrative proceedings an order for judgment was entered in March 1978 finding defendant permanently disabled as a result of a 1973 heart attack, an occupational back injury and occupational hearing loss.

The order for judgment awarded permanent disability benefits to Boyton in the amount of $112.00 per week for 360 weeks. The order directed Carpenter to commence the weekly compensation payments retroactively as of August 1, 1974, the date of Boyton's retirement. The Carpenter Pension Board determined, because of the compensation award's retroactive effect, that defendant had been overpaid monthly benefits for the entire period from November 1, 1974 to March 31, 1978. Since the amount of worker's compensation award was greater than the amount of the monthly benefit, the Board determined that defendant had been overpaid as to the entire amount of the benefits paid. The Board also determined to suspend Boyton's regular pension benefits commencing March 1978 for the duration of the period of the disability benefits. To the best of the court's knowledge, those benefits remain suspended to this day. The Board apparently made no attempt to recover the special payment.

Upon receipt of notification of the Board's determinations Boyton threatened suit against plaintiffs. Plaintiffs reacted by filing this suit on June 23, 1978 seeking a declaratory judgment that the Plans and their actions under the Plans are lawful and a money judgment against defendant in the amount of $15,184.90.

C. Legal Issues.

Boyton threatened suit against Carpenter on the grounds that the offset in respect of Workmen's Compensation benefits

violated portions of the New Jersey Workmen's Compensation law. N.J.S.A. 34:15-7 *et seq.* Specifically, Boyton relied upon N.J.S.A. 34:15-29, which provides in relevant part that:

> [T]he right of compensation granted by this chapter may be set off against disability pension benefits or payments, but shall not be set off against employee's retirement pension benefits or payments.

It is clear to the court that Carpenter's actions violate this statute.

Carpenter seeks a declaratory judgment that this statute is invalid. Carpenter contends that the statute has been preempted by ERISA, that it has been preempted by federal labor law, and that it unconstitutionally impairs the obligations of contracts.

Anticipating a position adopted by the defendant in his counterclaim, the amended complaint filed July 20, 1978 also seeks a declaratory judgment that the Plans' offset provisions do not constitute a forfeiture prohibited by the minimum vesting provisions of ERISA §203, 29 U.S.C. §1053. In the alternative, Carpenter contends that the pertinent provisions of ERISA do not apply to Boyton; first, because he retired before the effective date of ERISA, and second, because Boyton retired at the age of 47 prior to attaining "normal retirement age" as that term is used in ERISA §203, 29 U.S.C. §1053. *See* ERISA §3(24), 29 U.S.C. §1002(24).

I will first address the validity of the state statute and then turn to the substantive content of ERISA's vesting requirements.

II. THE VALIDITY OF THE STATE STATUTE.

Carpenter initially argues that the pertinent provisions of the New Jersey statute are preempted by ERISA. Two judges in

this district have addressed this exact issue, each holding that the New Jersey statute was not preempted by ERISA. *Buczynski v. General Motors Corp.*, 456 F. Supp. 867, *aff'd on reh'g*, 464 F. Supp. 133 (D.N.J. 1978) (Lacey, J.), *app. pending*, No. 79-1688 (3d Cir.); *Alessi v. Raybestos-Manhattan, Inc.*, No. 78-434 (D.N.J. Feb. 15, 1979) (Whipple, S.J.).[1] Since I reach a conclusion differing from that of my brethren, I shall set forth my reasoning in some detail.

United States Supreme Court cases explaining the proper application of the Supremacy Clause, U.S. Const. art. VI, cl. 2 are legion. *See, e.g., Mallone v. White Motor Corp.*, 435 U.S. 497 (1978); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *DeCanas v. Bica*, 424 U.S. 351 (1976). Whenever a preemption claim is raised, these cases and others teach that the intent of Congress is the touchstone. *Mallone, supra*, 435 U.S. at 504; *Amalgamated Transit Union v. Byrne*, 568 F.2d 1025, 1028 (3d Cir. 1977).

Congress' intent to preempt an area of state law may be either express or implied. *E.g., Ray, supra*, 435 U.S. at 157, and the Supreme Court has identified three ways in which that intent may be demonstrated. First, Congress may unmistakably ordain that local law be preempted. *Florida Lime & Avacado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). Second, the "nature of the regulated subject matter may permit no other conclusion but that Congress intended to preempt local law on the subject." *Id.* Third, local law may stand as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress" and therefore be preempted. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). *See also Rogers v. Larson*, 563 F.2d 617 (3d Cir. 1977), *app. dismissed and cert. denied sub. nom., Larson v. Lockhart*, 439 U.S. 803 (1978); *National State Bank of Elizabeth v. Long.*, 469 F. Supp. 1068 (D.N.J. 1979).

In the present controversy Carpenter's principal argument is that section 514(a) of ERISA, 29 U.S.C. §1144(a), is an

unmistakable expression of Congress' intention to preempt the field of pension benefits law.[2] Section 514(a) provides:

> (a) Except as provided in subsection (b) of this section, the provisions of [Title I: "Protection of Employee Benefit Rights" and Title IV: "Plan Termination Insurance" of this act] shall *supercede any and all State Laws insofar as they may now or hereafter relate to any employee benefit plan* described in [ERISA §4(a), 29 U.S.C. §1003(a)] and not exempt in section 4(b) [29 U.S.C. §1003(b)]. This section shall take effect on January 1, 1975.

Carpenter contends that N.J.S.A. 34:15-29 is a state law which relates to the pension plan at issue here and is therefore preempted. I agree.

I believe that the New Jersey statute "relates to" these Plans sufficiently to instigate the preemption command of section 514(a). Judges Lacey and Whipple concluded that the state act did not sufficiently relate to similar covered plans to be preempted. Judge Lacey states in *Buczynski, supra* 456 F. Supp. at 867:

> Although the New Jersey statute undoubtedly "relates to" pension plans in the broadest dictionary sense of that term, this court cannot agree with the defendant that the New Jersey statute "relates to" pension plans within the meaning of ERISA, 29 U.S.C. §1144(a). Congress, to be sure, must have intended by that language to occupy the entire field of pension plan law to the exclusion of all state regulation . . . However, the New Jersey statute at issue here is in no way concerned with pension

> plans *qua* pension plans. On the contrary, the statute is solely concerned with the protection of the employee's right to workers' compensation disability benefits. . . .
>
> Congress, by enacting ERISA, and the specific preemptive language of 29 U.S.C. §1144(a), could not have intended to prohibit states from protecting an employee's state-created right to worker's compensation benefits. . . .

Judge Whipple essentially concurred with this analysis. *See Aless, supra* at 3-4. Each stressed New Jersey's substantial interest in awarding and protecting compensation benefits and concluded that Congress did not intend to preempt this particular statute. I must respectfully disagree with this conclusion.

Congress' intention to preempt all state regulation of pension plans *qua* pension plans is manifest. 29 U.S.C. §1144(a); *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 239 n. 8 (1978); *Malone v. White Motor Corp.,* 435 U.S. 497, 499 & n.1 (1978). *See also Wadsworth v. Whaland,* 562 F.2d 70 (1st Cir. 1977), *cert. denied,* 435 U.S. 980, 981 (1978); *Hewlitt-Packard v. Barnes,* 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd per curiam,* 571 F.2d 502 (9th Cir. 1978), *cert. denied,* 439 U.S. 831 (1978); *Standard Oil Co. of Cal. v. Agsaluyd,* 442 F. Supp. 695 (N.D. Cal. 1977); *Bell v. Employee Security Benefit Assoc.,* 437 F. Supp. 382 (D. Kan. 1977). I believe, however, that Congress' intention was to preempt more than just state regulation of pension plans *qua* pension plans. Congress expressly preempted *"any and all* state laws insofar as they may now or hereafter *relate to any"* plan. In choosing this language Congress specifically rejected less expansive language with the stated purpose of eliminating endless litigation over the scope of the preemption clause. Congress chose to exercise its preemption

power in its broadest sense. The legislative history to that effect is set out comprehensively in *Wadsworth, supra,* 562 F.2d at 70; *National Carrier's Conference Commission v. Heffernan,* 454 F. Supp. 914 (D. Conn. 1978); *Hewlett-Packard, supra,* 425 F. Supp. 1294, and a plethora of other decisions and will not be repeated here. That history has led numerous courts to conclude that Congress' preemption of the field of pension benefit plans was "virtually total". *E.g., Bell, supra,* 437 F. Supp. at 387.

Section 514(a) has been the basis for striking down such non-pension plan regulations as a state tax measure which imposed upon the organization maintaining a plan a tax amounting to a percentage of the annual benefits paid. *National Carrier's, supra,* 454 F. Supp. 914. It has also been the basis for striking down a state anti-discrimination law directing payment of specific benefits to females. *Pervel Industries, Inc. v. Commission on Human Rights & Opportunities,* 468 F. Supp. 490 (D. Conn. 1978), *aff'd mem.* 603 F.2d 214 (2d Cir. 1979). These cases indicate that ERISA goes far beyond the preemption of only state laws regulating pension plans *qua* pension plans.[3]

The purpose of the preemption clause is to insure that employers doing business in many states are not subject to varying and inconsistent state laws. Congress determined that the amount of an individual's pension benefits should not vary from state to state merely because of the vagaries of state laws which do not regulate pension plans but which clearly have an effect on and relate to such plans. All other things being equal, upholding this statute's validity would mean that similarly situated Carpenter employees in New Jersey and elsewhere would receive different amounts of benefits merely because of the New Jersey law. I do not believe that Congress would approve of such a result.

Judge Lacey decided that the New Jersey statute undoubtedly "relates to" pension plans in the broadest

dictionary sense of the word. I agree. I do not, however, believe that there is any basis for concluding that Congress intended to use the word in any but its ordinary and everyday usage. It is not a term of art.

I therefore conclude that N.J.S.A. 34:15-29 is preempted by ERISA §514(a), 29 U.S.C. §1144(a).

III. EFFECT OF ERISA.

Having determined that the New Jersey statute has no effect on the outcome of this controversy, I must determine the extent to which ERISA governs the outcome. The first of plaintiff's arguments to be addressed must be his contention that the minimum vesting provisions of ERISA are altogether inapplicable because Boyton retired on August 1, 1974, prior to both the enactment of ERISA and the effective date of the minimum vesting requirements of ERISA §203, 29 U.S.C. §1053. Carpenter places primary reliance for this position upon Treas. Reg. 1.411(a)-2(f), which provides:

> The requirements of [I.R.C. §411 (and therefore ERISA §203, 29 U.S.C. §1053)] do not apply to employees who separate from service with the employer prior to the first plan year to which such requirements apply and who never return to service with the employer in a plan year to which [I.R.C. §411] applies.

In this case, Carpenter operated its plan on a calendar year basis and made no election to accelerate the applicability of the relevant ERISA provisions.[4] ERISA §203, therefore, first became applicable to the Plans on January 1, 1976, long after Boyton retired.

On the facts of this case, however, I do not believe that accepting plaintiff's position would lead to the proper result. The

causes of action asserted by both plaintiffs and defendant did not accrue until the entry of the order for judgment and the Board's subsequent determination to suspend defendant's pension. This occurred in 1978. In addition, defendant did not lose all rights to his pension, but only to a portion of it during the 360-week period in which he received disability benefits. I must concur with the reasoning of Judge Friendly in *Riley v. MEBA Pension Trust,* 570 F.2d 406 (2d Cir. 1977), *aff'd after remand,* 586 F.2d 968 (2d Cir. 1978) that such periodic offsets must be viewed as separate "forfeitures" for each month in which the offset is made. *Compare Keller v. Graphic Systems of Akron, Inc.,* 422 F. Supp. 1005 (N.D. Ohio 1976) *with Riley, supra.* The minimum vesting provisions of ERISA are therefore applicable, in the very least, to monthly offsets occurring after December 31, 1975. Prior to that time, some non-ERISA law must govern.

Turning first to that period of time governed by ERISA, I must determine whether ERISA allows Carpenter to continue to offset defendant's workmens' compensation payments against his future retirement benefits and whether plaintiffs may recoup payments made to defendant from January 1976 to March 1978, inclusive.

The answer to this question depends at the outset upon whether the Plans offset provisions constitute forfeitures prohibited by ERISA §203, 29 U.S.C. §1053(a). Among other requirements not relevant here, section 203 states: "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age . . ." 29 U.S.C. §1053(a). *See also* I.R.C. §411(a). ERISA defines "nonforfeitable" to mean in relevant part "a claim . . . to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service which is unconditional, and which is legally enforceable against the plan." ERISA §3(19), 29 U.S.C. §1002(19).

Appendix G

Pursuant to authority vested in the Secretary of the Treasury by ERISA §3002(c), 29 U.S.C. §1202(c),[5] the Secretary has promulgated regulations purporting to explain what is meant by the minimum vesting requirements created by ERISA. Treas. Reg. §1.411(a)-4(a) states in pertinent part that "nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits."

Were the existence of this regulation conclusive, my analysis would proceed no further. The regulation, however, has been challenged as exceeding the authority granted by Congress to the Secretary and as not in compliance with the statute.

In part I of this opinion I explored in some detail the legal issues because I disagreed with the decisions reached by Judges Whipple and Lacey. This time, however, I concur with their reasoning. I will therefore not go into this matter in any detail except to state that, for the reasons expressed in *Buczynski* and *Alessi,* I find that Treas. Reg. 1.411(a)-4(a) is not consistent with the intent of Congress as expressed in 29 U.S.C. 1053 and I.R.C. §411, and that the offset of workmen's compensation benefits against defendant's pension benefits is an impermissable forfeiture under ERISA §203, 29 U.S.C. §1053. *See also Stong v. Bucyrus-Erie Co.,* 472 F. Supp. 1089 (E.D. Wis. 1979).[6]

Whether the offset is unlawful in this particular case, however, depends upon the validity of Carpenter's argument that section 203 does not apply because Boyton has not yet reached "normal retirement age". Reference to 29 U.S.C. §1053 reveals that the nonforfeitability requirement attaches only upon an employee's attainment of "normal retirement age". That term is defined in ERISA §3(24), 29 U.S.C. §1002(24) to mean the earlier of:

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of —

(i) the time the plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

See also I.R.C. §411(a)(8). Pursuant to his statutory authority, the Secretary of the Treasury has promulgated Treas. Reg. 1.411(c)-7(b)(1) to give guidance in determining normal retirement age when not expressly stated in the plan. That regulation provides that "if an age is not specified by a plan as the normal retirement age, then the normal retirement age under the plan is the earliest age beyond which the participant's benefits under the plan are not greater solely on account of his age or service."

These statutes and regulations reveal that Congress intended to allow forfeitures of benefits when an employee opts to retire prior to attaining normal retirement age. *See, e.g., Riley v. MEBA Pension Trust, supra,* 580 F.2d at 969-70; *Spitzler v. New York Post Corp.,* 476 F. Supp. 386 (S.D.N.Y. 1979); *Capocci v. General Motors Corp.,* 444 F. Supp. 1306 (D. Haw. 1978). I do not believe, however, that I am presently in a position to finally determine what the normal retirement age is under the Carpenter Plans. Carpenter argues that normal retirement age is 65, the age at which "normal retirement" is allowed under the Plan. *See* Plan §2.1; Restated Plan §2.1. In the alternative, Carpenter contends that since there is no age at which benefits cease accruing solely on account of age or service under the Plans, normal retirement age must be 65 under 29 U.S.C. §3(24)(b).

Defendant has not addressed either of these arguments. The court's independent research, however, indicates the possibility that a plan might have multiple normal retirement ages, and that a specified early retirement option might qualify as a normal retirement age. *See, e.g., Spitzler, supra,* 476 F. Supp. at 388-89. I therefore decline to finally resolve this point until such time as the parties have submitted supplemental briefs on these issues.

Turning now to the time period before the applicability of ERISA, I must determine whether plaintiffs may recover the regular pension payments made from November 1, 1974 through December 31, 1975. Neither party has addressed the question of what law governs this period, but I believe that resolution is possible here without requiring additional briefs.

From November 1, 1974 to December 31, 1974 New Jersey law governs. After December 31, 1974, the ERISA preemption provision is effective, and state law would therefore be inapplicable starting January 1, 1975. At that time, however, the vesting provisions of ERISA are still not applicable. The court is thus faced with a situation where ERISA takes away the only established body of law on a topic yet does not replace it with any express federal law. It is therefore the duty of the court to determine the appropriate rules of decision for this period. *See Schlansky v. United Merchants & Manufacturers, Inc.,* 443 F. Supp. 1054 (S.D.N.Y. 1977); *Amory v. Boyden Associates, Inc.,* 434 F. Supp. 671 (S.D.N.Y. 1976).

The offset must be considered valid in that period of time governed by New Jersey law. *See Renshaw v. U.S. Pipe & Foundry Co.,* 30 N.J. 458 (1959). In fact, N.J.S.A. 34:15-29 was added in 1977 to overrule the cases allowing such offsets.

For the one-year period covering calendar 1975, the appropriate test should be a test of reasonableness. *See Amory, supra,* 434 F. Supp. at 673. Although normally a question of

fact, on the record before me I believe I can safely conclude that the provision is reasonable. I have found that the offset is valid prior to this one-year period because it was considered reasonable under the established case law. It would make little sense to find it unreasonable in this one-year period. I accordingly find that the offset provision was valid at all times prior to the effective date of ERISA's non-forfeiture provisions.

IV. CONCLUSION.

In conclusion I have found that ERISA §514(a), 29 U.S.C. §1144(a), preempts N.J.S.A. 34:15-29. In addition I have found that ERISA §203, 29 U.S.C. §1053, which in large part governs this case, generally prohibits the offset in question but does not prohibit it where, as may be the case here, the employee has not yet attained normal retirement age. Since I have not determined whether Boyton has attained normal retirement age, I cannot yet determine the validity of the continuing offsets. I have, however, found that the offset provision is valid for the period of time prior to the effective date of ERISA §203 in this case.

Since there is no dispute about the amount of monthly benefits which Boyton received from November 1974 to December 1975, I will at the appropriate time enter judgment in plaintiffs' favor in that amount. I request additional briefs on the normal retirement age question within 20 days of the date of this opinion. After resolving that last remaining issue judgment will be rendered on this entire controversy.

Dated: December 12, 1979.

Appendix G

FOOTNOTES

1. Judge Lacey actually found that the New Jersey statute was preempted because it was merely duplicative of the federal law in prohibiting the offset. *See Buczynski, supra,* 456 F. Supp. at 872. Assuming, *arguendo,* that the offset provision did not offend ERISA, Judge Lacey held in the alternative that ERISA 514(a), 29 U.S.C. §1144(a) did not unmistakably ordain that the state statute be preempted. *Id.* at 872-74 & nn. 20, 22.

2. Carpenter also suggests that the New Jersey statute is preempted because it attempts to prohibit what ERISA §203, 29 U.S.C. §1053 and Treas. Reg. 1.411(a)-4(a) promulgated thereunder affirmatively permit and is therefore in direct conflict with the federal law. This contention is discussed *infra* at note 6.

3. ERISA §514(a), 29 U.S.C. §144(a) has also been the basis for striking down state community property laws awarding a divorced spouse an interest in the working spouse's pension benefits, but these decisions are not uniform. *Compare, e.g., Francis v. United Technologies Corp.,* 458 F. Supp. 84 (N.D. Cal. 1978) *with Stone v. Stone,* 450 F. Supp. 919 (N.D. Cal. 1978). Because of this split, I do not rely on these cases. Assuming that such laws are not preempted, they are distinguishable because they affect only the identity of the recipient and not the employer's obligation to pay a specified amount of benefits. *See also* ERISA §206, 29 U.S.C. §1056.

4. ERISA §211(b), 29 U.S.C. §1061(b) provides that the minimum vesting standards of section 203 with regard to plans in existence on January 1, 1974 apply "in the case of Plan years beginning after December 31, 1975." *See also* ERISA §1012(b)(2); I.R.C. §411(b)(2); Treas. Reg. 1.411(a)-2. The Carpenter Plan was in existence on January 1, 1974 and was operated on a calendar year basis. No election was made to accelerate the effective date of the vesting provisions. ERISA

§211(d), 29 U.S.C. §1061(d). *See* Affidavit of Fred R. Huehnergarth, filed May 11, 1979, at ¶5. The first plan year to which section 203 applied therefore was that commencing on January 1, 1976.

5. ERISA §3002(c), 29 U.S.C. §1202(c) provides:

> (c) Regulations prescribed by the Secretary of the Treasury under [I.R.C. §§410, 411 and 412] shall also apply to the minimum participation, vesting, and funding standards set forth in [ERISA §§201, 202, and 203]. Except as otherwise expressly provided in this Act, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury . . . in a manner inconsistent with the way such regulations apply under [I.R.C. §§410(a), 411 and 412].

6. Holding, as I do, that ERISA §203, 29 U.S.C. §1053, generally prohibits the offset at issue here, I must reject Carpenter's claim, see note 2, *supra*, that N.J.S.A. 34:15-29 is preempted because it prohibits that which ERISA expressly permits.